IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1077 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ

No

MARWADI BHAWARLAL MODILAL

Versus

JIVIBEN W/O LALLUBHAI R SHAH

Appearance:

Mr.Mrugen Purohit for Mr PRASHANT G DESAI for Petitioner

Ms.Paurami Sheth for MR BR SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/08/98

ORAL JUDGEMENT

1. This is tenant's revision under Section 29(2) of the Bombay Rent Act, 1947 (for short "the Act").

2. Brief facts are that the disputed accommodation was let out to the defendant revisionist on monthly rent of Rs.38/-. Rent fell due from him with effect from 1.6.1978 to 30.6.1979. Demands were made by the plaintiff, but the arrears were not paid by the defendant revisionist. Consequently composite notice of demand and ejectment was issued on 31.7.1979 which was served on the revisionist. He did not comply with the direction given in the notice nor paid arrears of rent. Consequently suit for eviction was filed on the ground of arrears of

rent. During the pendency of the Suit the plaint was amended and two more grounds were added. It was alleged that the revisionist was keeping two buffaloes in the premises due to which the premises became dirty and it causes nuisance to other tenants. Another ground was that the defendant is also collecting and keeping grass in the suit premises which amounts to change of user of the Suit property.

3. The case has a checquered history. The defendant was served with notice, but he did not appear initially. Hence ex-parte decree was passed. He preferred an Appeal, but there also he faulted and there was delay in preferring the Appeal. An application for condonation of delay was moved which was rejected by the Appellate Court. Revision was preferred against that order in this Court which was allowed. Application for condonation of delay was allowed. Thereafter the Appeal was preferred. It was heard and decided. The Appellate Court remanded the Suit to the trial Court for fresh hearing after affording opportunity to the parties to lead evidence. Thereupon the defendant revisionist filed written statement wherein he admitted the rate of rent and that the tenancy was monthly. He, however, denied that he was in arrears of rent. He pleaded that he deposited the rent in Court. He also denied the allegations of nuisance and change of user made by the landlord during pendency of the Suit.

4. The trial Court disbelieved subsequent two grounds added in the plaint, viz. the tenant changing the user of the suit premises and causing and creating nuisance and annoyance therein. The Suit was, however, decreed on grounds of arrears of rent. The trial Court found that the notice was valid and that the rent was not paid within a month of service of notice of demand.

5. Appeal was preferred by the revisionist which was dismissed. Hence this revision.

6. Learned Counsel for the parties were heard. The first contention of the learned Counsel for the revisionist is that the notice of demand is invalid. He further contended that the notice to quit is also invalid. Lastly he contended that the two courts below did not consider the tenant's readiness and willingness to pay the arrears of rent. On these grounds he contended that the decree for eviction is liable to be set aside.

7. So far as first contention is concerned the

notice Ex.12 on record is in Gujarati. English translation of the said notice has been filed by the learned Counsel for the revisionist as well as by the learned Counsel for the respondent.

8. In this connection argument of the learned Counsel for the revisionist has been that a composite notice of demand and ejectment is invalid. There is no force in this contention. Section 106 of the Transfer of Property Act lays down in what manner the tenancy is to be determined. Termination of tenancy under Section 106 of the Transfer of Property Act is not based upon certain contingency nor any reason is to be assigned by the landlord for terminating tenancy. If a Suit for eviction is to be filed under the General Law, viz. the law of landlord and tenant within the meaning of Section 106 of the Transfer of Property Act the Suit for eviction against the tenant can be filed straight-way without assigning any reason why the landlord wants to evict the tenant. If, however, the Suit is to be filed under some special law like Bombay Rent Act in the instant case, simply on ground of termination of tenancy the Suit for eviction cannot be filed. The landlord has to establish one of the ground for eviction contained and contemplated under the Rent Act. Unless this is done no suit for eviction under Special Law can be filed by the landlord.

9. So far as contents of notice are concerned neither underSection 106 of the Transfer of Property Act nor under Section 12(2) of the Bombay Rent Act any proforma is prescribed under which such notices are to be prepared and served upon the tenant. The purpose of Section 106 of the Transfer of Property Act is to terminate the tenancy by unequivocal words and there should be no invalidity in the notice. The tenant should be afforded clear opportunity either of 15 days or of 30 days as the case may be to hand over vacant possession of the suit accommodation to the landlord. Beyond this there is no further requirement of law. Of course such notice is to be in writing and it should be signed by or on behalf of the person giving it as contemplated in Second part of Section 106 of the Transfer of Property Act. The mod of service of such notice is also provided in Section 106, Part : II of the Transfer of Property Act.

10. So far as the notice under Section 12(2) of the Bombay Rent Act is concerned here also no proforma is prescribed. This section simply says that no suit for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of standard arent or permitted increase due until expiration of one

month next after notice in writing of demand of the standard rent or permitted increase has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act. Thus, the requirement of this section is that the notice of demand should be in writing in which there should be demand of the standard rent or permitted increase and such notice should be served upon the tenant in one of the manners provided under Section 106 of the Transfer of Property Act. There is no dispute that the notice was served in one of such modes prescribed under Section 106 of the Transfer of Property Act.

11. If the landlord is required to serve notice under Section 106 of the Transfer of Property Act and also notice of demand under Section 12(2) of the Rent Act he can combine two notices in one notice and there is no mandate either under Section 106 of the Transfer of Property Act or under Section 12(2) of the Rent Act that seperate notice should be given. Thus, composite notice of demand and eviction is perfectly valid notice. Hence the only requirement is that such composite notice conforms to the requirement of the two sections, viz. Section 106 of the Transfer of Property Act and Section 12(2) of the Bombay Rent Act.

12. Learned Counsel for the revisionist contended that the notice of demand is invalid because no specific demand has been made by the landlord asking the tenant to pay rent within a month of service of notice of demand. In support of his contention he has placed reliance upon two decisions of this Court.

13. Section 12(2) of the Bombay Rent Act does not oblige the landlord to mention that the tenant should pay arrears of rent within a month of service of notice of demand. On the other hand the prohibition contained in Section 12(2) of the Rent Act is that the landlord can not file Suit for eviction unless period of one month after service of notice of demand has expired. The demand of arrears of rent in the notice of demand forthwith has been held to be valid demand. Even according to the Division Bench pronouncement of this Court in Khimji Bhimji Majithia V/s. Taraben Lalji Soni, reported in XXIII(2) 1982 (2) GLR 114, the Division Bench observed in this case that Section 12(2) of the Act casts unalterable duty on the landlord to serve the tenant with a notice of express demand of rent and if there is no forthwith demand in the notice, the notice could be said to be bad or invalid for non-compliance with the mandatory requirement of Section 12(2) of the Act. From

this observation of the Division Bench it is clear that in the first place there should be express demand of rent in the notice and that such demand of rent should be forthwith. Consequently in view of this dictum of the Division Bench of this Court I do not find any force in the contention of the learned Counsel for the revisionist that the landlord should give month's time to the tenant to pay arrears of rent.

14. Coming to the next question whether there is specific demand of rent in the notice or not, the notice has to be taken into account. True translation filed by the two learned Advocates representing the two sides are not almost identical. Original notice is in Gujarati. However, relevant portion in the two notice which are material to adjudicate this controversy are reproduced below :

In the translated notice submitted by the respondent's Counsel, following words in first para are material :

"....give this last notice to you...."

In the 2nd para it is mentioned that -

"...Rate of rent is Rs.30/- p.m..."

It is further mentioned that the rent has been paid by the revisionist upto 31.5.1978. It is also mentioned that the rent from 1.6.1978 to 30.6.1979 for 13 months amounting to Rs.494/- is due from the tenant.

In the third para the material portion demanding the rent is as under :

"...and to pay agreed rent to my client and to obtain legal receipt thereof."

This notice was issued by the counsel for the landlord. As indicated above since no proforma is prescribed either under Section 106 of the Transfer of Property Act or under Section 12(2) of the Bombay Rent Act the Counsel is not expected to explain in what manner and in what serial order the notice to quit and notice of demand is to be arranged in the notice. So far as the notice of demand is concerned from this notice it can be gethered that the rate of rent was disclosed. The period of arrears was disclosed. Thirteen months was specified and the exact arrears were also specified. There was also a specific demand to pay the agreed rent to the client and to obtain legal receipt thereof. Agreed rent in the notice means the rent mentioned in Para : 2 of the notice.

15. So far as translated copy of notice submitted by the learned Counsel for the revisionist is concerned

first para contained the following material words :

"....this final notice is under...."

This is corresponding to first para of translation submitted by the learned Counsel for the respondent.

In second para there is difference in the two translations. The period for which the arrears fell due, the rate of rent, amount, etc. has been clearly mentioned.

In the third para following portions are material :

"....you should also pay arrears of rent to my client and obtain valid receipt thereof."

This is also the same as mentioned in the translation submitted by the respondent's counsel. The last portion in Para : 3 of this notice also make clear demand of arrears of rent and required the tenant to pay the same and obtain receipt. This notice is strictly in accordance with pronouncement of this Court in Babulal Kalidas V/s. Bai Kashi, reported in 18 GLR 77. It lays down as under :

> "At the hearing of the Revision Application, it was urged in the forefront that the notice under Sec.12(2), which was a mandatory requirement, was ineffective or invalid inasmuch as it did not make the demand of the standard rent as required by the said provision and that, therefore, no decree under sec. 12(3)(a) could have been passed. I find that there is substance in this contention and that for that reason alone the decree of eviction in so far as it is based on the ground of non-payment of rent must be set aside."

16. Applying the ratio in the above case to the facts of the case before me it can be said that the notice was not vague. The demand was also not vague. The demand was specific, hence the notice of demand cannot be said to be invalid.

17. The only case cited by the learned Counsel for the revisionist was of Khimji Bhimji (supra) which is a Division Bench pronouncement. In this case also it was emphasised that there should be express demand of rent and if there is no forthwith demand in the notice, the notice could be said to be bad or invalid. However, there is no dispute about this proposition of law.

18. The learned Counsel for the revisionist, however, contended that in this case it was further laid down by the Division Bench that the notice must tell the tenant that this is the last opportunity afforded to the tenant to pay up the arrears. On the basis of this observation the learned Counsel for the revisionist contended that since last opportunity was not afforded to the tenant to pay the arrears of rent the notice is required to be held as invalid. However, Section 12(2) itself does not oblige the landlord to mention in the notice that this is last opportunity which is being afforded to the tenant to pay entire arrears of rent up to date. If the Legislature never intended to cast any such duty upon the landlord the courts can not by taking upon themselve the task of legislature introduce anything in the section which was never intended to be introduced by the Legislature. This Division Bench pronouncement on this point was explained by a learned Single Judge of this Court in the case of Rambhai Jhenidas Panchal V/s. Lalitaben wd/o Ramanlal Panchal, reported in 23(2) G.L.R. 545. Explaining the Division Bench pronouncement in Khimji Bhimji's case (supra) this Court observed in Rambhai's case that the ratio of decision in Khimji Bhimji is to declare a law that even if the tenant may be defaulter for a number of months or years the landlord can not file straight-way the Suit for eviction on the ground of non-payment of rent, but only after the notice as required under Section 12(2) of the Bombay Rent Control Act is given. It further observed that it is not the intention of the Division Bench to import something more than what has been enacted in Section 12(2) of the Act and requires the landlord to state in his specific word that this is the last opportunity given to the tenant. It also observed that ultimate intention of the legislature is that the landlord should give last opportunity to the tenant to pay arrears of rent and not that the last opportunity should be mentioned in so many words that this is the last opportunity given.

19. In view of this explanation of Division Bench pronouncement by this Court the notice cannot be struck down because in this express words "last opportunity" were not mentioned.

20. However, the words "this final notice" and "this last notice" in the first para of the notice themselvdes make it clear that the landlord intended to treat this notice to be last notice giving last opportunity to the tenant to clear off the arrears. Thus, even if the Division Bench verdict is strictly applied in that case

too the notice cannot be said to be invalid.

21. So far as the validity of notice under Section 106 of the Transfer of Property Act is concerned it is not invalid. It cannot be said that there was conditional termination of tenancy. There was clear termination of tenancy by unconditional words. It was not obligatory for the landlord to serve notice of demand wait for one month after service of such notice and then serve another notice to quit under Section 106 of the Transfer of Property Act. A composite notice of demand and eviction is complete requirement of law.

22. It was also contended by the learned Counsel for the revisionist that straight-way the tenancy could not be terminated and if the tenant would have been afforded opportunity to pay arrears, the suit for eviction could not be filed. This contention is also not acceptable. Maintainability of suit for eviction is one thing and service of notice of demand and eviction is another thing. As stated earlier tenancy can be terminated either forthwith or after 15 days of service of notice or after 30 days of such service as the case may be. However, merely by terminating tenancy the suit for eviction under the Bombay Rent Act could not be filed. The landlord has to serve notice of demand as well. This notice of demand was also served. Consequently the landlord was not expected to wait for a month. If the tenant during this period paid the rent, the landlord could not have filed the Suit. The correct position therefore is that if after service of notice of demand the tenant would have cleared off the arrears of rent within one month thereof, of course the landlord would not be entitled to decree for possession within the meaning of Section 12(3)(a) of the Act nor the landlord can take advantage of Section 12(3)(a) of the Act.

23. In the instant case for the reasons given above both the notices contained in one document are found to be perfectly legal and valid notices. The two Courts below rightly concluded that it was a case covered under Section 12(3)(a) of the Bombay Rent Act. The decree for eviction was therefore rightly passed.

24. Learned Counsel for the revisionist in the last contended that the two courts below did not consider the tenant's readiness or willingness to pay or tender the rent. However, once the Courts below found that the case was covdered under Section 12(3)(a) of the Rent Act they had no choice but to decree the Suit for eviction and they were not obliged to consider the tenant's readiness

and willingness to pay the arrears of rent. This is a ground under Section 12(1) of the Act and not under Section 12(3)(a) of the Act.

25. No other point was pressed. For the reasons given above no merit is found in this revision which is hereby dismissed. Parties shall bear their own costs.

sd/-

* * * * *

sas